

Docket No. CWA-08-2003-0033

Respondent.

CONSENT AGREEMENT

Proceeding under Section 1319(g) of the
Clean Water Act, 33 U.S.C. § 1251 et seq.

1. Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Montana Department of Transportation (MDT), by their undersigned representatives, hereby consent and agree as follows:

a. On February 10, 2003, Complainant issued a Complaint alleging certain violations of sections 301 and 404 of the Clean Water Act (CWA), 33 U.S.C. § 1311 and 1344 for the discharge of fill material into waters of the United States without a permit. The Complaint proposed a civil penalty for the violation alleged therein.

b. Respondent admits the facts that allege fill was placed in waters of the U.S. and the jurisdictional allegations of the Complaint but does not admit to the allegations in Attachment A of the Complaint. By entering into this consent agreement, Respondent does not admit to criminal activity by itself or its employees.

c. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

d. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

2. Respondent consents and agrees to pay a civil penalty in the amount of Seventy Thousand dollars (\$70,000), in the manner described below in this paragraph:

- a. Payment is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Elyana Sutin
Legal Enforcement Program (8ENF-L)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

3. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

4. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

5. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent Agreement.

6. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

7. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

8. Each party shall bear its own costs and attorney fees in connection with this matter.

9. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

In the Matter of Montana Department of Transportation,
Docket No. CWA-08-2003-0033

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 5/29/03

By: A.M Gaydosh for/
Carol Rushin, Assistant Regional
Administrator, Office of Enforcement
Compliance and Environmental Justice

Date: 5.29.03

By: SIGNED
Elyana R. Sutin,
Enforcement Attorney
Legal Enforcement Program

MONTANA DEPARTMENT
OF TRANSPORTATION,

Respondent.

Date: May 27, 2003

By: SIGNED
David Galt, Director

Date: May 27, 2003

By: SIGNED
Lyle Manley, Attorney
Legal Services Unit

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **MONTANA DEPARTMENT OF TRANSPORTATION, DOCKET NO.: CWA-08-2003-0033** was filed with the Regional Hearing Clerk on June 2, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Elyana Sutin, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Lyle Manley, Esq.
Montana Department of Transportation
P. O. Box 201001
Helena, MT 59620-1001

June 2, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 2, 2003.